



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA CERTIFIED MAIL

Mr. Rodney Dickens
President
Allegheny Energy, Inc.
300 Cabin Hill Drive
Greensburg, PA 15601

June 30, 2010

Re: Allegheny Power, Docket No. TSCA-03-2010-03014

Dear Mr. Dickens:

Enclosed please find the signed and final Consent Agreement and Final Order ("CA/FO") resolving the above-referenced matter. The CA/FO has been filed today with the Regional Hearing Clerk.

Please contact me at (215) 814-2483 if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Donovan".

Joseph Donovan
Associate Regional Counsel for
Regulatory Enforcement

Enclosure



**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

03/13/11
JULIA
BLA. PA

In the Matter of:	:	
	:	
West Penn Power Company d.b.a.	:	
Allegheny Power	:	U.S. EPA Docket No. TSCA-03-2010-0314
800 Cabin Hill Drive	:	
Greensburg, Pennsylvania 15601	:	
	:	
Respondent,	:	
	:	
Allegheny Power	:	
Connellsville West Side Stores	:	Proceeding under Sections 15 and 16
311 7th Street	:	of the Toxic Substances Control Act,
Connellsville, Pennsylvania 15425	:	15 U.S.C. §§ 2614 and 2615
	:	
Facility.	:	

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region III (“Complainant”) and West Penn Power Company d.b.a. Allegheny Power (“Respondent” or “Allegheny Power”) pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Sections 15 and 16 of the Toxic Substances Control Act, 15 U.S.C. §§ 2614 and 2615 (“TSCA”) and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)) (“Consolidated Rules of Practice”). This Consent Agreement and the accompanying Final Order (collectively referred to herein as the “CAFO”) resolve violations of TSCA and of the regulations implementing TSCA Section 6(e), 15 U.S.C. § 2605(e), as set forth in 40 C.F.R. Part 761, entitled *Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions* (hereinafter, the “PCB regulations”).

2. The violations cited herein pertain to the Respondent’s alleged failure to comply with PCB regulations promulgated pursuant to TSCA Section 6(e), 15 U.S.C. § 2605(e), governing the prohibition of, and/or the requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage and marking of polychlorinated biphenyls (“PCBs”) and PCB items at Respondent’s Connellsville West Side Stores Facility located at 311 7th Street, Connellsville, Pennsylvania 15425 (“Facility”).

II. GENERAL PROVISIONS

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.
4. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in Section III (“Findings of Fact and Conclusions of Law”) of this CAFO.
5. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
6. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
7. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
8. Each Party shall bear its own costs and attorney’s fees.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the findings of fact and conclusions of law set forth immediately below.
10. Respondent, West Penn Power Company d.b.a. Allegheny Power, is a Pennsylvania corporation and a wholly-owned subsidiary of Allegheny Energy, Inc. Respondent is registered to do business in the Commonwealth of Pennsylvania and maintains an office at 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601.
11. Respondent is a “person” as defined in 40 C.F.R. § 761.3.
12. Respondent is, and at all times relevant to this Consent Agreement was, the owner and operator of the Facility where the Respondent, among other things, services PCB-contaminated transformers, capacitors and other electrical equipment for use in various electrical transmission capacities.
13. On March 31, 2009, a representative of the Allegheny Power’s Connellesville West Side Facility contacted a duly authorized representative of the United States Environmental Protection Agency (“EPA” or the “Agency”) regarding an incident involving improper

transportation of a PCB-contaminated transformer.

14. On March 20, 2009, according to the Allegheny Power representative, an overpack container containing a PCB-contaminated transformer was transported to G&S Technologies in Kearney, New Jersey without the proper manifest.
15. On March 23, 2009, Allegheny Power's PCB Coordinator contacted G&S by telephone and notified the shipping coordinator that a properly labeled PCB-contaminated item had been loaded onto the trailer in error. Although properly labeled, this PCB-contaminated item did not have the proper manifest. The G&S Shipping Coordinator's supervisor advised Allegheny Power's PCB Coordinator that the item had already been processed.
16. On April 15, 2009, a representative of Allegheny Power sent a letter to EPA describing the incidents set forth in Paragraphs 13 through 15, above, self-disclosing such incidents pursuant to the *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*, April 11, 2000 ("EPA's Self-Disclosure Policy").
17. TSCA Section 15, 15 U.S.C. § 2614, provides, *inter alia*, that it shall be unlawful for any person to fail or refuse to comply with any rule promulgated under TSCA Section 6, 15 U.S.C. § 2605.
18. On the basis of the information collected, Complainant has determined that Respondent has violated TSCA Sections 6(e) and 15, 15 U.S.C. §§ 2605(e) and 2614.

COUNT I

Failure to Prepare a Manifest for Commercial Offsite Storage and Disposal of PCB Waste

19. The allegations of paragraphs 1 through 18 of this Consent Agreement are incorporated herein by reference.
20. 40 C.F.R. § 761.3 provides, in pertinent part, that the term "PCB-Contaminated Electrical Equipment" means "any electrical equipment, including transformers, that contains ≥ 50 and < 500 ppm [parts per million] PCBs."
21. 40 C.F.R. § 761.207(a) requires, in relevant part, that a generator who relinquishes control over PCB wastes by transporting or offering for transport PCB waste for commercial off-site storage or off-site disposal shall prepare a manifest on EPA Form 8700-22, and shall specify, among other things, the identity of the PCB waste, the date of removal from service for disposal, the type of PCB waste, and the weight in kilograms of the PCB waste in each PCB Article.

22. At all times relevant to the allegations herein, there was present and in storage at the Connellsville West Side Facility, or in transport for disposal, one (1) transformer, which transformer is a "PCB-Contaminated Transformer" as that term is defined at 40 C.F.R. § 761.3 (hereinafter, the "Connellsville transformer").
23. Respondent violated TSCA Section 15, 15 U.S.C. Section 2614, and the requirements of 40 C.F.R. § 761.207(a), by failing to prepare a manifest on EPA Form 8700-22 for the transformer.

IV. CIVIL PENALTY

24. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of Nine Thousand Six Hundred and Seventy Two Dollars (\$9,672.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.
25. The aforesaid settlement amount is consistent with the provisions and objectives of TSCA and 40 C.F.R. Part 761. Complainant has determined the appropriate penalty for the violations identified and described in this Consent Agreement upon consideration of a number of factors, including the penalty criteria set forth in Section 16(a)(2)(B) of TSCA, *i.e.*, the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, degree of culpability, and such other factors as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Polychlorinated Biphenyls Penalty Policy* (April 9, 1990) to calculate the civil penalty amount assessed in the preceding paragraph of this Consent Agreement. Complaint has also considered the *Adjustment of Civil Monetary Penalties for Inflation*, as set forth in 40 C.F.R. Part 19, and the September 21, 2004 memorandum by Acting EPA Assistant Administrator Thomas V. Skinner entitled, *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule*.
26. Payment of the civil penalty amount assessed in paragraph 24, above, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:
 - A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.* TSCA-03-2010-0314.

- B. All checks shall be made payable to “**United States Treasury.**”
- C. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Eric Volck 513-487-2105

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

- E. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency.”

- F. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706

Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737
Contact: John Schmid 202-874-7026 OR REX, 1-866-234-5681

- G. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

- H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- I. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Catherine Mc Cool
Lead Paralegal Specialist
U.S. Environmental Protection Agency
Region III (Mail Code 3RC42)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

27. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described

below. Accordingly, Respondent's failure to make timely payment shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

28. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
29. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
30. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent for more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
31. Respondent agrees not to deduct for federal tax purposes the civil monetary penalty assessed in this CAFO.

V. EFFECT OF SETTLEMENT

32. Payment of the penalty specified in paragraph 24, above, in the manner set forth in paragraph 26, above, and payment of any applicable interest, handling costs and/or late payment charges, as set forth in paragraphs 27 through 31, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under TSCA for the specific violations alleged in Section III ("Findings of Fact and Conclusions of Law"), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VI. OTHER APPLICABLE LAWS

33. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

VII. CERTIFICATION OF COMPLIANCE

34. Respondent certifies to Complainant, upon investigation, to the best of its knowledge and belief, that Respondent, in its capacity as the owner and operator the Connellsville West Side Stores Facility, presently is complying with the provisions of TSCA, and the regulations promulgated thereunder, that are referenced in this Consent Agreement.

VIII. RESERVATION OF RIGHTS

35. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged in Section III ("Findings of Fact and Conclusions of Law") herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(b) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under TSCA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the EPA Regional Hearing Clerk.

IX. PARTIES BOUND

36. This CAFO shall apply to and be binding upon the EPA, the Respondent and its officers, directors, employees, successors, agents and assigns.

X. EFFECTIVE DATE

37. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XI. ENTIRE AGREEMENT

38. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are

no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

XII. EXECUTION

39. The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by his/her signature that he/she is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

For Respondent, Allegheny Power, Inc.:

Date: 6/18/2010

By: 
~~Paul J. Everson~~ Rodney L. Dickens
President, Allegheny Power, Inc.

For Complainant:

Date: 6/28/2010

By: 
Marcia E. Mulkey
Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 6/29/10

By: 
Abraham Ferdas, Director
Land and Chemicals Division

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

West Penn Power Company d.b.a. : **U.S. EPA Docket No. TSCA-03-2010-0314**
Allegheny Power :
800 Cabin Hill Drive : **Proceeding under Sections 15 and 16**
Greensburg, Pennsylvania 15601 : **of the Toxic Substances Control Act,**
: **15 U.S.C. §§ 2614 and 2615**

Respondent, :

:

Allegheny Power :
Connellsville West Side Stores :
311 7th Street :
Connellsville, Pennsylvania 15425 :

Facility. :

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency ("EPA"), Region III, and Respondent, West Penn Power Company d.b.a. Allegheny Power, have executed a document entitled "Consent Agreement," which I ratify as a Consent Agreement in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, published at 40 C.F.R. Part 22, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3) ("*Consolidated Rules of Practice*"). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, pursuant to Sections 15 and 16 of TSCA, 15 U.S.C. §§ 2614 and 2615, and the *Consolidated Rules of Practice*, and upon representations in the Consent Agreement that the penalty agreed to therein is based upon a consideration of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), IT IS HEREBY ORDERED that Respondent pay a civil penalty of Nine Thousand Six Hundred and Seventy Two Dollars (\$9,672.00) in the manner set forth in the Consent Agreement and in accordance with the provisions, terms and conditions thereof.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA, Region III or by his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA, Region III.

Date: 6/30/10

By: Renee Sarajian
Renee Sarajian
Regional Judicial Officer
United States Environmental Protection Agency
Region III

In the Matter of Allegheny Power, Docket No. TSCA-03-2010-0314

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused to be sent the attached Consent Agreement and Final Order to the following parties:

Original By Hand Delivery to:

Regional Hearing Clerk, Region III,
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Copy by Hand Delivery to:

Regional Judicial Officer, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Copy by Certified Mail:

Rodney L. Dickens
President
West Penn Power Company,
d.b.a. Allegheny Power
300 Cabin Hill Drive
Greensburg, Pennsylvania 15601

Date: 6/30/2010

Catherine Mc Cool
Catherine Mc Cool
Lead Paralegal Specialist